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September 20, 2019

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Marlene H. Dortch
Commission Secretary
Office of the Secretary
Federal Communications Commission

**VIA ELECTRONIC COMMENT
FILING SYSTEM**

*Re: In the Matter of Rural Digital Opportunity Fund, Connect
America Fund
WC Docket No. 19-126 and WC Docket No. 10-90.*

Dear Ms. Dortch:

On behalf of the West Virginia Broadband Enhancement Council, please find included herewith for filing the "*Initial Comments of the West Virginia Broadband Enhancement Council*" in the above-referenced matters.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in blue ink that reads 'James V. Kelsh'.

James V. Kelsh
(WV State Bar No. 6617)

JVK/dlm
Enclosures
cc: Kelly Workman

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Rural Digital Opportunity Fund)	WC Docket No. 19-126
)	
Connect America Fund)	WC Docket No. 10-90

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THE WEST VIRGINIA BROADBAND ENHANCEMENT COUNCIL**

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**INITIAL COMMENTS OF
THE WEST VIRGINIA BROADBAND ENHANCEMENT COUNCIL**

I. Summary of Comments

In these comments, the West Virginia Broadband Enhancement Council (“Council”) makes the following principal recommendations:

1. The Federal Communications Commission (“FCC” or “Commission”) should modify its proposed allocation of Rural Digital Opportunity Fund (“RDOF”) monies to make \$5 billion available in a first round starting in 2020 for Phase I based upon Form 477 data, and make the balance of Phase I monies, \$11.4 billion, available in a Phase I, second round process to commence in 2022, based upon the more granular Digital Opportunity Data Collection (“DODC”) data.
2. The RDOF Phase I procedure should include a process in which third parties can contest a determination that an area is partially served.
3. The FCC should maintain 25 Mbps/3 Mbps (“25/3”) as the standard for broadband availability.
4. In evaluating competing bids for funds to extend or improve service to a given area, the Commission should give weight not only to the dollar amount of the proposal but

also to the following factors: (a) the extent to which the proposed technology is readily upgradeable to meet the public demand for ever-increasing internet speeds; (b) the suitability of the proposed technology to the topography of an area; (c) the degree of public satisfaction with the type of technology proposed; (d) the degree of public satisfaction with the applicant's service; and (e) the affordability of the proposed service relative to the Median Household Income of the area.

5. The FCC should attempt to minimize application and accountability obligations to attract small and diverse organization types.

II. Introduction

The West Virginia Broadband Enhancement Council was established by the West Virginia Legislature to promote broadband development in West Virginia. Quality broadband service is foundational for an area to have an opportunity to attract economic growth and retain and increase residents. Promptly closing the rural digital divide is an important public policy goal for our state and the nation. The comments provided herein represent the Council's commitment to this important endeavor. The State of West Virginia has a unique perspective on broadband deployment in unserved and underserved areas. West Virginia is one of the most rural states. The rural digital divide is all too real in West Virginia, with only 72.5% of the rural population having access to 25/3 advertised fixed broadband, compared to 84.6% statewide, and 93.5% nationwide.¹

The Council commends the Commission for proposing the RDOF, the Commission's major initiative to put up to \$20.4 billion of Universal Service Fund ("USF") monies to work to expand broadband in unserved and underserved rural areas over the next decade. As the Commission's principal rural broadband promotion effort over a lengthy period, it is important that RDOF be implemented as effectively as possible.

¹ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 18-238, FCC 19-44 May 8, 2019, Appendix 1.

RDOF builds upon and learns from the Commission's experience with its prior broadband promotion efforts, the Connect America Fund ("CAF"), Phases I and II. CAF I and II relied upon data from providers from the Commission's Form 477, and the Commission's proposed RDOF Phase I would continue to rely upon Form 477 data.² In the Commission's currently pending notice of proposed rulemaking on Digital Opportunity Data Collection ("DODC"), the Commission has stated "it has become increasingly clear that the fixed and mobile broadband deployment data collected on the Form 477 are not sufficient to understanding where universal service support should be targeted and supporting the imperative of our broadband-deployment policy goals".³ The insufficient granularity of Form 477 and the lack of an opportunity to contest determinations that an area is partially served has led to too many areas being wrongfully excluded from an opportunity to compete for broadband deployment funds.

The DODC NPR invites comments on developing a location specific data submission format for mobile and satellite broadband providers.⁴ The data submission format for mobile and satellite broadband providers will need to be completed before the DODC provides a common reporting format usable by all mode of broadband providers. The Council estimates it will take approximately three years for the DODC data submission format to be finalized and implemented for all modes of providers. The Council is highly confident that the DODC data submission format will greatly increase the accuracy of data submitted to the FCC, and DODC data should be used to make funding award decisions as soon as it is available. However, the Council does not want USF funds to be held and not put to use in the interim. Consequently, the

² August 1, 2019 Notice of Proposed Rulemaking, *In the Matter of Rural Digital Opportunity Fund, Connect America Fund*, WC Docket Nos. 19-126, 10-90, FCC 19-77 ("RDOF NPR"), ¶3.

³ August 1, 2019 Report and Order and Second Further Notice of Proposed Rulemaking, *In the Matter of Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, FCC 19-79 ("DODC NPR"), ¶5.

⁴ *DODC NPR*, ¶4.

Council recommends that the Commission modify its proposed allocation of RDOF Phase I funds. Approximately \$5 billion of USF funds should be utilized in RDOF Phase I based upon Form 477 data submissions in the next three years. A brief opportunity should be provided for the public to review and contest a determination that a census block is partially served, and thus ineligible for Phase I funding. The remaining \$11.4 billion of Phase I funds should be distributed in a second round of applications based upon DODC data to be held in approximately three years. RDOF Phase II would occur after the second round of Phase I has been completed.

The Council supports the Commission's adoption and use of 25/3 as the standard for broadband availability.

In evaluating competing bids to serve an area, the Commission should adopt a scoring system which will favor those providers that propose to utilize upgradeable technology to meet the ever increasing public demand for faster service, and which is suitable for the topography and other circumstances of a given area. The general satisfaction of customers with a type of service proposed, and the customer satisfaction level with a particular provider should also be weighed in making awards in competitive areas. The application and accountability burden with RDOF should be kept modest to attract small providers, and flexible so that non-traditional providers, such as co-ops and non-profits can apply.

The Council is grateful for the continued support of the FCC and its many initiatives to enhance broadband service, particularly in rural locations like those found throughout the State of West Virginia. The Commission's careful consideration of the comments provided herein is appreciated.

III. Explanatory Comments

A. Phase I of RDOF Should be Split into Distinct Rounds

As related in the introductory portion of these comments, the Council believes that the success of the RDOF initiative depends heavily upon the accuracy of the data used by the Commission to determine which geographic areas are “unserved” or “partially unserved” and therefore eligible for RDOF funds. To ensure that RDOF funds are used wisely to reach the households and small businesses truly lacking access to adequate broadband service, the Council prefers that the Commission use the most granular service data available to it.⁵ The Commission expects that it will have DODC data available for use with Phase II of RDOF.⁶ However, the Commission proposes that Phase II of RDOF will have a much smaller pool of funds available to it than Phase I, and Phase II will be used for both wholly unserved and partially served areas, whereas Phase I funds are proposed to be restricted to wholly unserved areas only.⁷ The Council recommends that the Commission adopt a different allocation of funds and a different cycle of application processes that will both allow the Commission to make some awards in 2020 as planned, and use the more accurate DODC data as the basis to award the majority of Phase I funds.

The Council expects it will take approximately two years for the Commission to receive and take final action on the Second Further Notice of Proposed Rulemaking in WC Docket Nos. 19-195 and 11-10, and another year to develop an operational portal and receive sufficient data from satellite and wireless broadband providers in that portal to make the DODC data system a sufficiently complete and reliable system for making broadband funding award decisions. RDOF is structured around intermodal competition,⁸ which the Council supports. To have an open and

⁵ *RDOF NPR*, ¶21.

⁶ Statement of Chairman Ajit Pai, DODC NPR, at 107.

⁷ *RDOF NPR*, ¶17.

⁸ *RDOF NPR*, ¶3.

fair competitive process for all modes of providers, the Commission needs to make awards based upon a common format data set that is in use for all modes of providers. At present, the only such format is the FCC's Form 477 data. The Commission has sufficiently defined DODC for fixed broadband providers, however it has yet to do so for mobile and satellite providers.⁹

The Commission could defer making any RDOF awards until the DODC system is fully operational, however that would delay for probably three years releasing USF monies that could be at work reducing the lack of broadband availability in rural America. On balance, the Council does not believe that such a delay is warranted or in the public interest. For that reason, the Council recommends that the Commission use a proportionately reduced amount of the Phase I RDOF funds in a Form 477 based round 1 of RDOF. The Commission proposes to use \$16 billion of USF monies in Phase I of RDOF to be disbursed over a ten-year period, which works out to \$1.6 billion per year.¹⁰ The Council recommends that the Commission put three years of the expected average annual disbursement, \$4.82 billion rounded up to \$5 billion, into the first round of Phase I ("Phase I, Round 1"). The remainder, \$11 billion, would be used for a second round for Phase I ("Phase I, Round 2") funds to be awarded based upon the more accurate DODC data.

The Commission's Report and Order on the approved DODC for fixed broadband providers includes a process for "public feedback on the accuracy of these broadband maps."¹¹ The need for and value of a process which allows the public to contest determinations is far greater for Round 1 of Phase I of RDOF, when the determination that an area is partially served will be made on the basis of the admittedly faulty Form 477 data. To this end, the Council proposes including in the application process an opportunity for third parties to review bid applications, and

⁹ DODC NPR, ¶¶11, 85, 112.

¹⁰ RDOF NPR, ¶17.

¹¹ DODC NPR, ¶11.

for the FCC to receive comments contesting potentially inaccurate representations.¹² The Council believes that the geographic areas in West Virginia eligible for funding in the CAF Phase II auction were drastically reduced by inaccurate representations made during that application process. The issue of whether an area is wholly unserved or not should not be determined based solely upon the representation of a provider, without an opportunity for others to review and contest that representation. Allowing interested parties to submit data to contest representations will ensure that census blocks are not mislabeled and wrongfully excluded from the RDOF Phase I, Round 1 program.

The Council recommends that the Commission adopt a two-step process for Phase I, Round 1, with the FCC issuing a preliminary determination of wholly unserved areas and partially served areas, and then providing a 60-day window to receive additional comments supported by evidence, such as speed tests or other metrics to verify lack of service or inaccuracy of mapping on that preliminary determination. Upon receipt of such comments supported by evidence, the Commission would require the provider or applicant to supply the Commission with address level service data before a final determination is made. This comment period should be open to all prospective public commenters, not just applicants or providers.¹³ In order to prevent wrongful exclusion from RDOF eligibility and to effectively target spending efforts to bring broadband to those areas most in need of it, the FCC must have accurate broadband deployment data.

The Council is pleased to learn that the Commission will rely upon DODC for Phase II of RDOF to improve service to partially unserved areas.¹⁴ To the extent practical, the Commission should employ similar methodologies and practices to Phase I of RDOF. To accomplish that, it

¹² *RDOF NPR* ¶¶48-49, 61.

¹³ *Id.*

¹⁴ Statement of Chairman Ajit Pai, DODC NPR, at 107.

will be necessary to split Phase I into two rounds. The Council's proposal, if adopted, will allow the Commission to put USF funds to work as promptly as previously expected, while also allowing the majority of Phase I funds to be awarded on the basis of the more accurate data which will flow from DODC implementation to all modes of providers.

B. Broader Factors Should be Included in Weighing Competing Applications

The FCC has proposed to use weights to account for the different characteristics of service offerings that bidders propose to offer when ranking bids. This includes performance tier and latency weights.¹⁵ The Council supports using performance tier and latency weights but proposes that the FCC also give weight to the bidder's proposed technology when ranking bids.¹⁶ The Council proposes that the Commission use a qualitatively weighted system when evaluating bids that will reward applicants which propose high quality technology for an area, and which have a record of satisfying customers. If an area receives an RDOF Phase I award as being wholly unserved, one would hope that the same area would not need or be eligible for a subsequent broadband deployment award from the FCC. However, if a low-cost provider wins an RDOF Phase I award on the basis of the least expensive, but not upgradeable technology, the FCC may find itself paying twice for something it thought it had already fixed. In order to avoid that circumstance, the auction process needs to include some weighting for qualitative factors, certainly including whether an applicant plans to construct broadband infrastructure using high quality technology that can readily be upgraded to meet the public's continuing demand for ever faster internet speeds.¹⁷ As the Commission accurately notes, consumer demand for faster speeds has

¹⁵ RDOF NPR ¶¶20, 23, 25.

¹⁶ RDOF NPR ¶¶20, 23, 25, 72.

¹⁷ RDOF NPR ¶¶20, 23, 25, 72.

grown dramatically.¹⁸ This trend will undoubtedly continue. Giving preference to applicants who propose to use high-quality broadband infrastructure is not only a better long-term investment but will also increase service reliability and therefore customer satisfaction.

Another qualitative factor which should be given weighted consideration in evaluating the technology proposed by an applicant is the topography of the region in which the infrastructure will be installed. For example, in West Virginia, the mountainous topography makes certain technology, such as wireless, less reliable and therefore less beneficial to end users.

The FCC's weighted qualitative evaluation of proposals should also consider the degree of customer satisfaction with broadband service is correlated to the technology used, as well as the customer satisfaction rating of the applicant.¹⁹ Because customer satisfaction is useful for tracking actual service outcomes, the Council also suggests considering customer satisfaction, in addition to the number of years an applicant has been providing service, when evaluating an applicant's operational history and proposed technology.²⁰

C. The Commission Should Consider Affordability

The FCC has proposed to include both high-cost (i.e., those where the CAM estimates the cost to serve per location exceeds \$52.50 per month) and extremely high-cost locations (i.e., those where the CAM estimates the cost per location to equal or exceed \$198.60 per month) in the RDOF auction.²¹ The Council proposes using affordability benchmarks that reflect the economic reality of the geographic location in question.²² Specifically, the Council suggests creating affordability benchmarks based upon percentage of Median Household Income

¹⁸ RDOF NPR ¶14.

¹⁹ RDOF NPR ¶72.

²⁰ RDOF NPR ¶74.

²¹ RDOF NPR ¶56.

²² RDOF NPR ¶¶57-59.

(“MHI”) (found in the U.S. Census Bureau’s most recent American Community Survey data) that is or would be consumed to pay for broadband service in a particular area.²³

The FCC should establish affordability benchmarks based upon this objective standard and apply this test uniformly to all locations. For example, a high-cost location could be defined as any location in which paying for broadband service consumes or would consume more than two percent (2%) of MHI. By setting benchmarks as a percentage of MHI, the FCC will have a more accurate representation of what is high-cost to end users.²⁴ Determining affordability in this way is particularly important in West Virginia and other rural parts of the country where households have less income on average to devote to broadband service.²⁵ In a given wholly unserved or partially unserved area, an applicant that proposes to provide service at a more affordable level than another applicant should be given preference in the awarding of funds. In deciding as to whether to award funds to one area versus another, the Commission should act to have a levelling effect on the affordability of service, dedicating more funds to those areas where affordability for 25/3 Mbps service is more challenging, and refraining from awarding funds where 25/3 service is comparatively affordable.

D. The Regulatory Burden Should be Kept to a Minimum

In West Virginia, the Council is seeing a diverse array of types of entities attempting to provide broadband service to wholly unserved and partially unserved areas. These include new small businesses, small rural telecommunication carriers, non-profits, co-ops, and municipal governments. The Council understands the need for assurance that an RDOF recipient

²³ *RDOF NPR* ¶59.

²⁴ *Id.*

²⁵ U.S. Census Bureau, 2018 American Community Survey, Table H-8, accessible at <https://www.census.gov/data/time-series/demo/income-poverty/historical-income-households.html>

will implement what it said it will implement, however the Council recommends making the RDOF application and post-award accountability process no more burdensome than absolutely necessary to encourage these new and small providers to submit bids.²⁶

In many cases, the FCC likely has access to information previously submitted by applicants in the USF, USAC, or Form 477 databases. Reproducing this information is a costly and unnecessary expense for applicants. The Council believes an applicant should not be required to re-submit data if the FCC has access to such data in one of its databases. Similarly, an applicant that was deemed to be eligible under CAF Phase II should be offered a simple form to ratify and update its eligibility.²⁷ This applies to both the proposed short form and long form application processes. In addition, any changes that the FCC makes to the long or short form applications should include options to upload data previously filed with the FCC.

The FCC should make every effort to accommodate non-traditional service providers, such as co-ops, non-profits, and local governmental entities, during the application process. To this end, the Council proposes eliminating the bankruptcy opinion letter requirement, as it is unduly burdensome to small applicants.²⁸ For the same reason, applicants should also be given the option of providing a personal guaranty of the refund obligation rather than providing a letter of credit.²⁹ The FCC should extend the one hundred eighty (180) day window in which long-form applicants would be required to obtain an ETC designation from the relevant state commission after the release of the public notice announcing winning bidders to three hundred sixty-five (365) days.³⁰ With some state utility commissions, the ETC application process is not

²⁶ RDOF NPR ¶65.

²⁷ RDOF NPR ¶67.

²⁸ RDOF NPR ¶85.

²⁹ RDOF NPR ¶89.

³⁰ RDOF NPR ¶90.

continually open but rather is an annual proceeding involving all applications. Therefore, it may not be feasible to obtain this designation in one hundred eighty (180) days.³¹

E. Accountability Requirements Should be Kept Modest

The Council supports the FCC's framework for measuring speed and latency performance.³² The Council also supports the use of the same service milestones adopted for the CAF Phase II auction for the RDOF, but would encourage the FCC to enhance the third year milestone to require that the support recipient offer broadband and voice service to fifty percent (50%) of the requisite number of locations rather than forty percent (40%).³³

The Council also proposes that the FCC withhold funds from support recipients that miss key milestones during the support period.³⁴ The Council proposes that these funds be distributed *pro rata* to support recipients that have met their milestones to accelerate the return of investment for those on-track support recipients.³⁵

To ensure that support recipients are meeting these key milestones, the Council supports using the same reporting requirements adopted for the CAF Phase II auction.³⁶ However, as mentioned above, the Council recommends making the RDOF application and post-award accountability process no more burdensome than absolutely necessary to encourage small businesses and co-ops to participate in the program. The Council believes an applicant should not be required to re-submit data if the FCC has access to such data in one of its databases. The FCC can also reduce the burden of the post-award accountability process by standardizing the required documents and information and giving support recipients explicit guidelines for complying with

³¹ RDOF NPR ¶91.

³² RDOF NPR ¶26.

³³ RDOF NPR ¶28.

³⁴ RDOF NPR ¶¶29, 36.

³⁵ *Id.*

³⁶ RDOF NPR ¶32.

the accountability requirements. This will ensure greater ease of administration for the FCC and reduce the burden of support recipients.

Finally, the Council supports adopting subscribership milestones for RDOF support recipients.³⁷ A subscribership rate of seventy percent (70%) is realistic and not too burdensome considering the unique challenges of serving rural areas. The purpose of the RDOF is to connect unserved Americans to broadband service at an affordable price. Therefore, subscribership is a key metric of the program's success.

IV. Conclusion

The Council applauds the Commission for its renewed efforts to expand broadband service in unserved and underserved rural areas across the country by establishing the Rural Digital Opportunity Fund. To ensure these funds are used to reach the households and small businesses truly lacking access to adequate broadband service, the Council supports using the most accurate and granular data which the Commission will have available to it over the next decade to determine eligible areas. Because the improved DODC system will not be operational for approximately three years, the Commission should continue to rely upon Form 477 data for Round 1 of Phase I, but it should reduce the amount of funds in Round 1 so that the majority of funds in Phase I will be disbursed based upon the more accurate DODC data. The Phase I, Round 1 process should include an opportunity for third parties to review bid applications, and for the FCC to receive comments contesting potentially inaccurate representations regarding service availability.

Furthermore, the Council recommends other changes to the proposals described in the Notice of Proposed Rulemaking, such as using objective affordability benchmarks when determining high-cost areas; giving weight to high-quality and long-lasting infrastructure

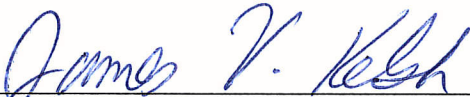
³⁷ *RDOF NPR* ¶41.

technology when evaluating bids; and making changes to the CAF Phase II application process and post-award accountability process that will decrease the burden on non-traditional service providers.

The West Virginia Broadband Enhancement Council appreciates the opportunity to submit comments and look forward to future opportunities for the Council to collaborate with the FCC and broadband service providers to improve these important programs.

WEST VIRGINIA BROADBAND
ENHANCEMENT COUNCIL

By Counsel



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**CITATIONS
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